

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

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**KYLE LUTZ**

**Petitioner,**

**v.**

**Case No. 15-CV-15  
(Criminal Case No. 12-CR-168)**

**UNITED STATES OF AMERICA  
Respondent.**

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**ORDER**

On January 9, 2015, petitioner filed this action under 28 U.S.C. § 2255, asking that I either reduce his federal sentence to account for a consecutive state term or order the state court to make its sentence concurrent. He also alleged that his lawyer provided ineffective assistance of counsel in various respects, including by failing to file a notice of appeal. I concluded that § 2255 provided no basis for reducing the federal sentence or vacating the state term, but ordered the government to respond to the ineffective assistance claims.

In its response, the government contends that all of petitioner's claims save one – the failure to appeal claim – are untimely under 28 U.S.C. § 2255(f). On the failure to appeal claim, the government contends that petitioner provides insufficient detail to warrant a hearing. See Aleman v. United States, 878 F.2d 1009, 1012 (7<sup>th</sup> Cir. 1989) (“Mere unsupported allegations cannot sustain a petitioner's request for a hearing.”); Barry v. United States, 528 F.2d 1094, 1101 (7<sup>th</sup> Cir. 1976) (“[I]t is the rule of this Court that in order for a hearing to be granted, the petition must be accompanied by a detailed and specific affidavit which shows that the petitioner has actual proof of the allegations going beyond mere unsupported assertions.”) (footnotes omitted).

**IT IS ORDERED** that petitioner file a reply to the government's response on or before **March 30, 2015**. With that reply, he may file a supplemental affidavit in support of his claim that he told his lawyer to appeal, including when he claims to have told his lawyer to appeal and when he alleges he learned no appeal had been filed.

Dated at Milwaukee, Wisconsin, this 27<sup>th</sup> day of February, 2015.

/s/ Lynn Adelman  
LYNN ADELMAN  
District Judge